No. 271

IN THE

Supreme Court of the United States

October Term, 1952

WILLIAM ADAMS, *Petitioner*

v.

STATE OF MARYLAND, *Respondent*

On a Writ of Certiorari to the Court of Appeals of the State of Maryland

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BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 97 A. 2nd, 281.

JURISDICTION

The opinion and judgment of the Court of Appeals of Maryland affirming the conviction of the petitioner in the Trial Court of Baltimore City was entered on the 10th day of June, 1953. The jurisdiction of this Court is invoked under Title 28, U.S.C.A., Section 1257 (3). (App. p. 30) Petitioner by written motion for appropriate relief in the Criminal Court of Baltimore City prior to his trial objected to the admission in evidence of the transcript of his testimony taken before the Senate Crime Investigating Committee in Washington, D.C. under date of June 2, 1951. (R. pp.

19-21). Oral objection was also made at the trial of this case to the admission of this testimony, and an appropriate oral motion was made to strike it from the record. Both the oral objection (R. p. 58) and oral motion were overruled by the Trial Court and the testimony was admitted in evidence. (R. p. 68). Petitioner in thus objecting relied on Section 3486 of Title 18, U.S.C.A. The petitioner was found guilty by Judge E. Paul Mason, presiding in the Criminal Court of Baltimore City on May 29, 1952. (R. p. 78). The objection to the admission of the above testimony was renewed in the Motion for a New Trial heard by the Supreme Bench of Baltimore City which motion was overruled by the Supreme Bench of Baltimore City on November 26, 1952. (R. p. 80). Petitioner cited as error the failure of the Trial Court to exclude the evidence in accordance with the provisions of Section 3486, but the Court of Appeals of Maryland in its opinion (R. pp. 91-96) did not pass on the question whether or not the evidence was admissible despite Section 3486, but contented itself by saying that petitioner had testified before the Senate Crime Investigating Committee voluntarily, and that the evidence was admissible under the decision of *May* v. *United States,* 175 F. 2d 994. Petitioner obtained a stay of the Mandate of the Court of Appeals of Maryland for a period of sixty days pending the perfection of his application for a Writ of Certiorari in this Court.

QUESTION PRESENTED

I. Whether U.S.C.A., Title 18, Section 3486, reading as follows:

> "No testimony given by a witness before either House, or before any Committee of either House, or before any Joint Committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury in giving such testimony, but an official paper

or record produced by him is not within the said privilege."—(Appendix p. 30)

renders inadmissible testimony given by Adams before a Senate Committee in response to a summons from said Committee in a criminal case in the Maryland Courts and in turn avoids a conviction which has to rely upon the testimony thus admitted?

STATUTES INVOLVED

The pertinent statutory provisions are printed in Appendix pp. 30-36.

STATEMENT OF CASE

As this Court in granting certiorari has confined counsel to a single question of whether Title 18, U.S.C.A. Section 3486, rendered inadmissible testimony given by petitioner in a criminal case in the Maryland Courts, we are setting forth in the Statement of the Case only such material as we conceive of as being of aid to the Court in fully reviewing this feature of the case.

On July 2, 1951, the petitioner was summoned to testify before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate. He was also served with a subpoena duces tecum calling upon him to produce certain books and records at the time he testified.

In response to both subpoenas, the petitioner appeared and answered several questions propounded by the Counsel for the Committee.

On August 15, 1951, the Grand Jury in and for the City of Baltimore, State of Maryland, presented the petitioner and Walter Rouse, and charged them with conspiracy together and with other persons to the jurors unknown, to violate the lottery laws of the State of Maryland. On August 24, 1951, an indictment was returned against them, charging them with the identical crime charged in the pre-

sentment. A trial before Judge Sherbow and a jury on December 20, 1951 resulted in a verdict of "guilty" as to each; but thereafter and on to wit February 4, 1952, the Supreme Bench of Baltimore City granted both the petitioner and Walter Rouse a new trial.

Prior to the second trial, the instant case, a motion to exclude the testimony taken before the Senate Crime Investigating Committee was renewed, same having been made in the first trial, but was overruled by the trial court on May 21, 1952. On the same day, May 21, 1952, Walter Rouse filed a motion for severance which was granted by the trial judge.

On May 26, 1952, the petitioner went on trial before Judge E. Paul Mason sitting as a Jury where during the trial of the case, the oral objection to the introduction of the testimony of the petitioner before the Senate Crime Investigating Committee was renewed and overruled. (R. pp. 30-31). At the conclusion of the trial, Judge Mason found a verdict of "guilty." (R. p. 78). A motion for a new trial was filed with the Supreme Bench of Baltimore City, alleging that the verdict was contrary to the evidence and the weight of the evidence, that the indictment was insufficient and set forth a crime unknown to the Maryland law and should have been dismissed; that evidence was admitted of certain overt acts barred by the Statute of Limitations; that portions of the transcript of testimony of William Adams taken before the Senate Investigating Committee were erroneously admitted in evidence; and because of newly discovered evidence. (R. pp. 89-90). The Supreme Bench of Baltimore City, without comment or reference to any of the grounds upon which reliance was had, on, to wit, November 26, 1952, overruled the Motion for a New Trial. (R. p. 4).

Sentence of seven years in the Maryland Penitentiary and a $2,000 fine was imposed on petitioner, William Adams, by Judge Mason, on December 2, 1952. (R. pp. 4, 79-80).

An appeal was noted to the Court of Appeals of Maryland on December 2, 1952, where the judgment of the lower court was affirmed by opinion filed June 10, 1053.

The only evidence introduced at the trial of this case by the state as against the petitioner was the testimony of the witness Reuben Maurice Jones, the testimony of the petitioner before the Senate Crime Investigating Committee, and the testimony of Captain Alexander Emerson, member of the Police Department of Baltimore City and head of the vice squad. Captain Emerson's testimony had no probative value as far as the proof in this case was concerned, he, being called as an expert for the purpose of explaining the meaning of the term "lay off." Reuben Maurice Jones testified that he and a man named Milton Foster along with a number of others were engaged in a lottery operation at an address on Calhoun Street in Baltimore from November 3, 1947 to March 20, 1948. The State sought to connect the petitioner herein with the Calhoun Street operation by testimony from the witness Jones, as to a telephone call he testified as to having received from the petitioner on Saturday, November 1, 1947; testimony from Jones as to placing profits from the operation in petitioner's safe at 1519 Pennsylvania Avenue, Baltimore, and by two subsequent conversations, one in petitioner's office and one on a golf course.

According to the State's brief filed in the Court of Appeals of Maryland, the predicate for the prosecution in this case was the petitioner's testimony before the Senate Investigating Committee and the testimony of the witness Jones furnished the necessary corroboration. Thus will be seen the vital importance of the question of the admissibility of petitioner's testimony before the Senate Crime Investigating Committee since without this the State would not have had sufficient evidence with which to convict the petitioner, accepting the State's theory of the case. Under the Maryland Law, a defendant in a conspiracy case cannot be convicted on the uncorroborated testimony of an

accomplice alone. *Lanasa* v. *State,* 109 Md. 602, *Wolf* v. *State,* 143 Md. 489. In this case, there is no corroboration of the witness Jones' testimony who, under the State's theory, was an accomplice.

Over the objection of counsel for the defense, there was read into the record testimony of one Alfred F. Goldstein, identified as a stenotype verbatim reporter, as given at a previous trial and as being substituted for the original notes of Mr. Goldstein, which had been lost, reporting an executive session of July 2, 1951 of the Special Committee to Investigate Organized Crime in Interstate Commerce, U. S. Senate, Senator O'Conor, Chairman; and the testimony of Williams Adams as taken by Mr. Goldstein, before that Committee, accompanied by counsel, J. Francis Ford and Joseph Rogan. (R. pp. 54-68). From this recorded testimony of Mr. Adams, given to the Senate Committee in executive session, before which he had been subpoenaed, there was read into the record testimony to the effect that he had been engaged in the numbers business in Baltimore, Maryland, up until, to wit, May, 1950; explaining his participating in the operation and an average daily take-in of $1,000.00 with a limit of $1.00 to persons playing and in the event of a number of persons playing with him, say eight, having a dollar on the same number, he would lay off, say $4.00 with someone else, but he could not remember the names of any such persons. (R. pp. 62-66).

SPECIFICATIONS OF ERROR TO BE URGED

The Court of Appeals of Maryland erred:

(1) In denying to the petitioner the rights granted him by Section 3486, Title 18, U.S.C.A., by approving the introduction in evidence of his testimony before the Senate Crime Investigating Committee, and thereby denying the supremacy of an Act of Congress in violation of Article 6 of the Constitution of the United States. (Appendix 31).

SUMMARY OF ARGUMENT

Under date of May 3, 1950 the Senate of the United States passed Senate Resolution 202. Among other things, this resolution provided for the appointment of a special committee from the Committee on Interstate and Foreign Commerce of the Senate and the Committee on the Judiciary of the Senate, "to make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur . . ." (Appendix 31-32).

Pursuant to the above-mentioned resolution, the committee summoned the petitioner personally and also by subpoena duces tecum to produce certain records. The committee's authority to issue its subpoena is found in Section 192 of Title II of U.S.C.A. Section 192 makes it a misdemeanor if the witness, who appears in response to a subpoena, refuses to testify. (Appendix p. 30).

Pursuant to the subpoena and the provisions of Section 192, the petitioner appeared before the Special Committee in executive session and answered certain questions propounded to him by counsel for the committee. Subsequently, this testimony was submitted to the Grand Jury in and for the City of Baltimore, State of Maryland, as a result of which the petitioner and one Rouse were indicted for conspiracy to violate the lottery laws of the State of Maryland. At the final trial of this case in the Criminal Court of Baltimore City a severance was obtained by Rouse, and the State proceeded against the petitioner. Petitioner's testimony before the Senate Committee was offered in evidence by the State at his trial. Petitioner, through his counsel, objected to the introduction of this testimony on the basis of the provisions of Section 3486 of Title 18 of the U.S.C.A. Over objection, the testimony was admitted. Petitioner contended that Section 3486 of Title 18 of

U.S.C.A. was binding on the Courts of the State of Maryland because of the supremacy clause, Article VI, Clause 2, of the Constitution of the United States. Solely because of the introduction of petitioner's testimony before the Senate Committee, he was tried and convicted in the Criminal Court of Baltimore City, and the Court of Appeals of Maryland subsequently affirmed the conviction on the theory that petitioner had not asserted an immunity before the committee and that his testimony was voluntary and, in construing Section 3486, relied completely on the decision of the Court of Appeals of the District of Columbia in *May* v. *United States,* 175 Federal 2d 994, 1000, 1001.

Petitioner contends that Section 3486 is:

1. Clear in its meaning

2. That the provisions of the statute are binding upon the Courts of the State of Maryland, because this statute represents part of the supreme law of the land, Article VI, Clause 2, of the Constitution of the United States

3. That the statute makes no distinction as to the type of testimony (voluntary or involuntary), the statute providing that "no testimony given by a witness . . . shall be used as evidence in any criminal proceedings against him in any court . . ."

ARGUMENT

The History of Section 3486

This Statute was originally passed in 1857 and is found in 11 Statutes 156 (App. 36). It was repealed and reenacted in 12 Statutes 333 (App. p. 34) and was amended in 52 Statutes 943 (App. p. 35), and is now codified as Section 192 of Title 2 U.S.C.A. (App. p. 31) and Section 3486 of Title 18 U.S.C.A. (App. p. 31).

In 1857 the New York Times was represented in Washington by one Simonton. Simonton was approached by two members of the House of Representatives, who advised him

that certain lobbyists were very much interested in the passage of certain legislation. These members informed Simonton that said lobbyists should be required to pay for the said legislation. The members of the House stated that they believed that Simonton would be able to assist them in this matter and solicited his aid. This information was obtained by some other members of the House of Representatives and was reported to the Speaker of the House. The matter was then referred to a select committee, who summoned Simonton and requested him to advise them which of the two members had approached him. Simonton refused to furnish the desired information, and the committee recommended that he be cited for contempt of the House.

The law at that time did not provide adequate machinery for the punishment of contempt of either House of Congress and due to a very recent experience of the Senate in this connection, it was felt that the citation of contempt would probably not be very effective.

Accordingly, one of the members of the House, a Mr. Orr from South Carolina, had a bill prepared, which was twofold in nature. The first phase of the bill is substantially found in Section 192 of Title 2 U.S.C.A., which provides that a witness can be summoned and required to talk under the penalty of contempt. The remnant of the second section is now codified as Section 3486 of Title 18, but the immunity offered by that section was complete in nature rather than partial as it now is.

Extended debate was entered into by the members of the House and at one point it was referred back to the committee. Upon its return to the floor of the House by reason of certain changes which were made, the bill received the very active support of some of the members who had opposed it in its original form.

What the intendment was of the House of Representatives which passed this Bill is reflected by reference here had to statements made and colloquies had between some

of the members at the time of its passage. The Congressional Globe of January 22, 1857, at page 428, records the following statement of Congressman Davis of Maryland:

> "Still further. Having met the difficulties on these legal grounds, I say further, that it has no relation to a proceeding of this kind at all, because if the rule of the law, which protects a witness from giving evidence, which in another criminal proceeding might be used as evidence against himself, had any relation to that clause of the Constitution, then this enactment is for the precise purpose of relieving the party from legal prosecution. The very purpose of the enactment is to grant him a pardon beforehand; to protect him against *all judicial proceedings;* to repeal—as far as his case is concerned—*every criminal* enactment under which he might have been previously held guilty; and, on the other hand, it disables *every instrument of evidence* from carrying into a court of justice the facts which he may here have exposed; so that, although the Constitution should be construed to apply to a rule of testimony existing under the common law, this is in entire conformity to the Constitution even so construed, by relieving the party from *all legal proceedings* by which he could be convicted. He is, therefore, neither constrained here to give evidence against himself in a judicial proceeding in which he is defendant, nor to give evidence which may be used in any judicial proceeding which may hereafter be instituted. It is relieving him from prosecution, compelling him to testify—repealing the criminal law so far as he is concerned, and giving the investigations of this House free course." (Emphasis ours)

As a part of the same discussion, the following exchange took place between Representative Washburn and Representative Taylor of the 34th Congress:

> "Mr. Washburn, of Maine. Although Congress should enact that no declaration a witness shall make before a committee of this House shall be used in any court of law in any State of the Union, would such a provision be binding upon the State Courts, or can Con-

gress override or abolish their local laws and rules of evidence? . . . .

"MR. TAYLOR. The gentleman from Maine, as one of his objections to this bill, states that if it be passed, any person making declarations before this House, or any of its committees, will, in case of a criminal prosecution against him, be liable under State law, if those declarations can be proved, to conviction. Let me ask that member whether it is not law in every State of this Union, that no compulsory confession of a witness can be produced in evidence against him? Would not, under the law of the land, such declarations everywhere be excluded?" (Congressional Globe, January 22, 1857, p. 429)

It is abundantly clear from the foregoing that in considering the enactment of this Act, the House of Representatives had clearly before it the question of the State-Federal relationship involved and fully mindful of same, and we submit significantly, that the House of Representatives passed the Bill—183 or more voting for it and only 12 members opposing it. (43 Congressional Globe, Thirty-fourth Congress, 3d Session, page 433).

The bill was immediately sent to the Senate and was considered by the committee. Extended debate was entered into upon its return to the floor of the Senate. The main opposition to the bill came from Senator Hale, from New York, and from Senator Pugh, from Ohio. Senator Hale opposed the bill in an extended speech, in which he pointed out that in his opinion the provisions of the bill would not be binding upon the States. He did not cite any authority for the proposition he advanced, nor did he receive any assistance in the debate other than from Senator Pugh, from Ohio, who reduced his notion on the question to writing. In opposing the bill because of his belief that the provisions of same could not be binding upon the States, Senator Pugh used the following language:

"Congress can make no law to shield a witness from prosecution in the courts of the several States, nor prescribe any rule of evidence for those courts. It cannot give the witness, therefore, any equivalent for the common law privilege of which this act seeks to deprive him."

Senator Seward, in directing the point, said:

"The bill does not provide that, but is broad and general. It is, that whoever shall make willful default or refuse to answer any question pertinent to the issue under consideration before a committee or either House, shall be guilty of misdemeanor. I think State rights, as well as the rights of citizens are involved."
* * * * (Congressional Globe, supra)

During the debates, hypothetical cases of various types were posed by certain of the members in both Houses, particularly the Senate, as to a witness being summoned to testify who had been guilty of murder and who, under the compulsion of Section 192, was required to testify. (p. 437, Congressional Globe). It was contended by those in the majority that Section 3486 would give the man immunity not only in the Federal Courts but in the Courts in the various States. After extended debate on the matter, and with the State-Federal relationship fully aired, the Act was passd that day, 46 to 3 in the Senate. (p. 445, Congressional Globe).

When the statute was repealed and re-enacted in 1859, 12 Statutes 333 (App. p. 33), the complete immunity provision found in the original statute was removed and the use of the testimony merely prohibited, the statute providing that the testimony "shall not be used as evidence in any criminal proceeding against any such witness in any court of justice."

In 1938, the statute was amended to include a joint committee of either House, the original statute provided for only a single committee. 52 Statute 943 (App. p. 34).

Thus, the statute remains today essentially the same as when it was originally adopted.

It is, of course, important that the language of the Bill was in no wise changed, but rather, as passed, contained inclusive and unmistakable language:

> "No testimony given by a witness before either House, or before any Committee of either House, or before any Joint Committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury in giving such testimony, but an official paper or record produced by him is not within the said privilege."

History of Article 6, Clause 2 of the Constitution

The language of Article VI, Clause 2 of the Constitution is clear and unequivocal and its effectiveness in the instant case is beyond peradventure. (App. p. 31)

> "This Constitution and the laws of the United States which shall be made in pursuance thereof, * * * shall be the Supreme Law of the Land, and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The thirteen original States, having operated under the Articles of Confederation up until the adoption of the Constitution, had found that certain grave deficiencies existed. At the same time, as pointed out by writers of history, the thirteen original States had been pretty well bled white as a result of the struggle during the Revolution. But as a result of the Revolution, they had secured to themselves certain rights which they were most reluctant to give up. At the same time the more discerning members of the convention realized that in setting up the new government, that this new government should possess certain powers. Under the Virginia plan, the larger States would have had a greater representation in the new congress than

the smaller States, and the opposition to this proposal from the smaller States was so great that the convention was about to break up over the matter. At this point, one of the great compromises of the convention took place—the so-called Connecticut Compromise, where it is proposed that so far as the Senate was concerned, each state was to have equal representation, while in the House of Representatives, the representation was to be according to population. Immediately after the adoption of this compromise, Luther Martin, from Maryland, proposed what subsequently became Article VI, Clause 2 of the Constitution. It was not Martin's notion, as the debates of the constitution convention show, that the new government should have a new supreme power, rather it was Martin's intention that the new government should be subservant to the States in many respects. The resolution was amended twice. The second is as it appears in the Constitution today. After the drafting of the constitution had been completed, it was submitted to the various States and Luther Martin, in discussing the matter before the Maryland General Assembly, contended that the purpose of the Constitution was the total abolition of all state governments and the erection upon their ruins of one great empire. Despite his rabid opposition, Maryland approved the new Government and it was adopted by the remaining States in some instances by large majority and in other instances unanimously and in some by a close vote. It would thus appear that it was the intention of the framers of the Constitution that the constitution and the laws of Congress passed pursuance thereof, should be the supreme law of the land (Farrand's Records of the Constitutional Convention).

The Language of Section 3486 Is Plain and Clear in Its Meaning

It should be remembered in considering the questions involved in this case that one of the powers delegated to the new government by the Constitution under Section 8, of Article I, reads:

> The Congress shall have power "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Since the decision of *Gibbons* v. *Ogden,* (9 Wheaton 23), it has not been doubted that the Federal government has complete authority as far as interstate commerce matters are concerned, that it is not a problem with which any of the States need concern itself. It should also be remembered in this same section of Article I, Congress is given the authority

> "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

This clause is frequently referred to as the "necessary and proper clause" and is the basis for Hamilton's reference to "inferred powers".

The Special Committee, in pursuance of the power conferred upon it by Senate Resolution 202, was acting completely within its power when it summoned the petitioner to testify before it, in connection with the matter under investigation. Since it is necessary for the Congress from time-to-time to get information in connection with proposed legislation, this is another reason why the Committee was within its rights in summoning the petitioner.

The petitioner found himself on the horns of a dilemma. As was said by the Court of Appeals of the District of Columbia, in the case of *Nelson* v. *United States,* No. 11,353, decided July 2, 1953, "The Committee threatened prosecution for contempt, if he refused to answer; for perjury if he lied; and for gambling activities, if he told the truth."

At the same time, he was familiar, through advice of counsel, with the provisions of Section 3486, of Title 18, U. S. C. A., (supra).

The statute says "no testimony given by a witness * * * shall be used as evidence in any criminal proceeding against him in any court * * * "

The petitioner was prosecuted in the Criminal Court of Baltimore City, a State Court, as a result of an indictment handed down by the Grand Jury for the City of Baltimore, State of Maryland.

There can be no mistake as to the meaning of the language of this statute. A reference to the debates on this bill in Congress show definitely that it was the manifest intention of the Congress that the bill should apply to State Courts as well as to Federal Courts.

If the statute is applicable, then the presiding judge in the Criminal Court of Baltimore City should not have permitted the introduction of petitioner's testimony before the Senate Crime Investigating Committee in his trial in the Criminal Court of Baltimore City, and the Court of Appeals of Maryland should have reversed the conviction for this reason, if for no other.

The statute speaks of "no testimony" and of "any court." The statute says nothing about the witness claiming an immunity or whether he testifies voluntarily or otherwise. The statute is not qualified in any respect. Therefore, if the statute is applicable, it can only mean that no testimony given before a Congressional committee can be used as evidence against the witness in any criminal proceeding in any court. The word "any" is all inclusive.

The Provisions of Section 3486 Are Binding Upon the Courts of the State of Maryland, Because This Statute Represents Part of the Supreme Law of the Land, Article VI, Clause 2 of the Constitution of the United States

It will be argued by the Respondent in this case that while the statute, Section 3486, is clear in its meaning, it does not apply to proceedings in a State Court. This argument overlooks entirely the provisions of Article VI, Clause 2 of the Constitution. The petitioner contends that it was

the obvious purpose of Congress, judging from the debates in connection with the adoption of the Bill in 1857, that it was meant to cover proceedings in a State Court.

It should be remembered again, in connection with this matter, that the Senate Committee was investigating the effect of organized crime in interstate commerce. And, pursuant to the powers given to Congress under "the necessary and proper clause," it can make any and all laws necessary and proper for carrying into execution the powers it possesses. (*Dallas* v. *Bowles,* 153 Fed. 2d 464).

It is submitted that in connection with proposed legislation on this subject, it was necessary for the Congress to get certain information to determine, among other things, whether or not (1) legislation was necessary and (2) the type of legislation to be submitted.

As early as *Claflin* v. *Houseman,* 93 U.S. 130, this Court declared the doctrine of Federal Supremacy as far as a statute of the United States was concerned, and the doctrine of *Claflin* v. *Houseman* has been reaffirmed and reapplied in many cases since that time, as recently as the case of *Testa* v. *Katt,* 330 U.S. 396. More in point, as far as the present question is concerned, is the case of *Brown* v. *Walker,* 161 U.S. 591.

The Petitioner and Appellant, Brown, was an auditor for the Alleghany Valley Railway Company, and he had been subpoenaed as a witness before the Grand Jury at a term of the district court of the second district of Pennsylvania to testify as to a charge then under investigation by that body against certain officers and agents of the railway company for alleged violation of the Interstate Commerce Act. Certain questions were addressed to him which he refused to answer for the reason that his answer would tend to accuse and incriminate him. Brown was held in contempt. In that case, this court has before it for consideration the act of Congress of February 11, 1893, 27th Statute at large, 443, which provided that:

"No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience of the Commission. * * * on the ground and for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or either of them, or in such case or proceeding."

The argument was made in that case before this Court that while the witness was granted immunity from prosecution from the Federal government, he did not obtain such immunity against prosecution in the State courts. Mr. Justice Brown, in writing the opinion in that case stated with regard to this contention,

"We are unable to appreciate the force of this suggestion. It is true that the Constitution does not operate upon a witness testifying in the State Courts, since we held that the first eight amendments are limitations only upon the powers of Congress and the Federal courts, and are not applicable to the several States except so far as the 14th Amendment may have made them applicable."

"There is no such restriction, however, upon the applicability of Federal Statutes. The 6th article of the Constitution declares that, 'this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.'

The Court in that case relied upon the case of *Steward* v. *Bloom*, 78 U.S. 11, Wall 493, where the question was whether

a debt contracted by a citizen in New Orleans prior to the breaking out of the rebellion was subject in a State court to the statute of limitations passed by Congress June 11, 1864, declaring that as to actions which should accrue during the existence of the rebellion, against persons who could not be served with process by reason of the war, the time when such persons were beyond the reach of judicial process should not be taken or deemed to be any part of the time limited by law for the commencement of such actions. The court held unanimously that the debt was subject to this act, and in delivering the opinion of the court, Mr. Justice Swayne said:"

> "But it has been insisted that the Act of 1864 was intended to be administered only in the Federal courts, and that it has no application to cases pending in the courts of the states. The language is general. There is nothing in it which requires or will warrant so narrow a construction. It lays down a rule as to the subject, and has no reference to the tribunals by which it is to be applied. A different interpretation would defeat to a large extent, the object of its enactment * * *. The judicial anomaly would be presented of one rule of property in the Federal courts and another and a different one in the courts of the State, and debts could be recovered in the former which would be barred in the latter."

Speaking of the question involved in the case of *Brown* v. *Walker,* Mr. Justice Brown continued:

> "The act in question contains no suggestion that it is to be applied only to the Federal Courts. It declares broadly that 'no person shall be excused from attending and testifying * * * before the Interstate Commerce Commission * * * on the ground * * * that the testimony * * * required of him may tend to criminate him, etc. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify,' etc. It is not that he shall not be prosecuted for or on account of any crime concerning which he may testify, which might possibly be

urged to apply only to crimes under the Federal law and not to crimes, such as the passing of counterfeited money, etc., which are also cognizable under state laws; but the immunity extends to any transaction, matter, or thing concerning which he may testify, which clearly indicated that the immunity is intended to be general and to be applicable whenever and in whatever court such prosecution may be had."

The doctrine of supremacy as announced in the case of *Brown* v. *Walker* has never been overruled by any subsequent decision of this court, and it would seem therefore in the instant case, that the courts of Maryland were obliged to give full effect to the plain meaning and intent of Section 3486 of Title 18, U.S.C.A., and to exclude from the evidence in this case the testimony of the Petitioner before the Senate Crime Investigating Committee. It should be pointed out that in the instant case, the Congressional Committee was investigating the effect that organized crime had on interstate commerce, and if in a situation where the Congress has seen fit to act and to require testimony of witnesses, that the Congress would have the right to say what could or could not be done with the testimony it had taken. A similar provision of the law is found in the bankruptcy law, where in Section 25 of Title 11 of U.S.C.A. it sets out the duties of the bankrupt, included among which is the duty of the bankrupt to submit to an examination concerning the conduct of his business, the cause of his loss, his dealings with creditors and other persons, the amount, kind, and whereabouts of his property, and in addition, all matters which may effect the administration and settlement of his estate, "*but no testimony given by him shall be offered in evidence against him in any criminal proceeding.*" This statute has been before various State courts where the evidence has been held inadmissible.

Daniels v. *State*, 57 Fla. 1
People v. *Lay*, 193 Mich. 476
See also *People* v. *Donnenfeld*, 198 App. Div. 918, 135 N. E. 903.

Section 3486, Title 18, U.S.C.A., the immunity statute under consideration, has been before at least one State Court and that is in the case of *Erickson* v. *Hogan,* 98 N.Y. Supp. 2nd 858 wherein, it was decided expressly that this statute is applicable to procedure in the State courts.

The question here involved, was recently decided differently from the determination of the Court in the instant case in the case of *U. S.* v. *DiCarlo,* 102 Fed. Supp. 599.[1] The language of the Court in that case is enlightening and we submit controlling:

> "The foregoing considerations lead inescapably to the conclusion that the defendant is entitled to immunity against disclosures that might incriminate him of violations of state law as well as immunity against self-incrimination of a federal crime. If this conclusion cannot be said to rest upon the principle of state supremacy in the domain of reserved powers, as hereinabove discussed, it finds ample support in the principle that the Fifth Amendment operates as a restraint upon federal officers investigating state crimes.
>
> "It does violence to the American concept of constitutional governments in a system of dual sovereignties to suppose that there is an area of overlapping federal jurisdiction in which the federal government is released from constitutional restraints upon governmental power.
>
> "The rule that the Fifth Amendment affords protection only against prosecutions of federal offenses was declared in the Murdock case. The language of the opinion in that case impliedly negatives the suggestion that the rule should be thus limited in its application in cases where a federal investigation involves 'inquiries to discover evidence of a state crime'. The Murdock case therefore presents no barrier to the extension of the immunity of the Fifth Amendment to witnesses in a Congressional investigation of state crime. United States v. Saline Bank, supra, supports

[1] In this case defendant was charged in an indictment containing eight counts with violating Title 2, Sec. 192, U.S.C.A. in refusing to answer pertinent questions put to him as a witness before a sub-committee of a special committee of the United States Senate at Cleveland, Ohio, on January 19, 1951.

the view that the immunity of the Fifth Amendment may be so extended. While no express reference is made to the Fifth Amendment in that case, the implication is unmistakable that the decision rests upon the authority of the immunity clause of that Amendment. The same is true of the statements of Mr. Justice Holmes in Ballmann v. Fagin, supra. *The fifth Amendment operates as a restraint upon federal officers and federal agencies investigating federal matters. No good reason appears why this restraint should be removed in a federally conducted investigation of state crime.*

"For the reasons assigned, I am of the opinion that the defendant as a witness was entitled to claim immunity against disclosures that might subject him to prosecution under either federal or state laws." (Emphasis supplied)

It is submitted that the rulings of the presiding Judge in the Criminal Court of Baltimore City and the opinion of the Court of Appeals of Maryland, on the question now before this Court, are further in error for the reason that Article 2 of the Declaration of Rights, of the Constitution of Maryland, provides:

"The Constitution of the United States, and the Laws made or which shall be made in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are and shall be bound thereby, anything in the Constitution or Law of this State to the contrary notwithstanding."

This provision of the Maryland Declaration of Rights, above quoted, shows beyond possibility of successful contradiction, that the framers of the Maryland Constitution intended that it was to be mandatory upon the Judges in the various Courts in Maryland to enforce the provisions of the laws of Congress, enacted in pursuance of the Constitution, as part of the law of Maryland.

The Statute Makes No Distinction as to the Type of Testimony (Voluntary or Involuntary), the Statute Providing That "No Testimony Given by a Witness * * * Shall be Used as Evidence in Any Criminal Proceedings Against Him in Any Court * * *"

The Maryland Court of Appeals, in the Opinion by Judge Delaplaine, referred to both Section 192 of Title 2 U.S.C.A. and Section 3486 of Title 18 U.S.C.A. However, in disposing of the case, despite these two sections, the Court decided that it would accept the decision as announced by the Court of Appeals of the District of Columbia, in *May* v. *United States,* that in the absence of a refusal to answer followed by compulsion to answer, no immunity from prosecution arising out of the subject matter of testimony inures to the benefit of a witness before Congress either (1) under the Fifth Amendment of the Federal Constitution, or (2) under the statute penalizing failure to testify before Congress, or (3) under the statute providing that no testimony given before Congress shall be used as evidence in any criminal proceeding.

The Court adopted in toto the language of Mr. Justice Prettyman, who wrote the opinion in the May case:

> "The Fifth Amendment deals with compulsion to testify against oneself. Experience long demonstrated that public authorities must at time, in the public interest, obtain information which might incriminate the informant. They may compel that testimony. But they cannot violate, qualify or limit the Constitution. Therefore, when they compel testimony, they cannot use it against the informant. The Constitution is rigid in this respect.
>
> "But not all testimony given public authorities is compelled. Some is given voluntarily. and some, even though not volunteered, is supplied without objection. The Constitution says nothing about such testimony. It does not provide that what a man says voluntarily may not be used against him. So a statute which deals generally with the use of testimony falls partly within and partly without the scope of the Amendment. In

so far as it relates to the use of involuntary testimony, it cannot impinge upon the prohibition of the amendment. In so far as it relates to the use of other testimony, it is outside the scope of the Amendment and unaffected by it. The constitution does not require that a statute dealing generally, but exclusively, with the use of testimony be construed to prevent prosecution upon the subject matter of the testimony."

The marked distinction between the two cases can be unquestionably demonstrated. This petitioner, under subpoena and under the stress of being charged with a misdemeanor should he have refused to testify? (Section 192, Title 2, U.S.C.A.) appeared and answered questions propounded to him by counsel for the Committee. Whereas, Ex-Congressman May, at his own insistence, without summons, volunteered what he presumably considered as exculpatory statements, and in the trial of the case, through counsel made same the text of a press release. The procedure in that case we herewith incorporate by the following reference to the trial record in that case:

"Mr. Paisley: Here is a release to the press. It is styled 'House of Representatives, Committee on Affairs, Washington, D. C. Andrew J. May, 7th District Kentucky. Release, afternoon papers, Sept. 5, 1946, Warren E. Magee & Dan J. Anderson, Attys. at Law, Munsey Bldg., Washington, D. C.'

"Attached to that press release is a copy of a letter Mr. May wrote to the Chairman of the Meade Committee and 'Statement of Honorable A. J. May before the Senate Special Committee to investigate the National Defense Program, July 26, 1946,' and attached to that is what purports to be an accounting of the funds he received from Cumberland Lumber Co. * * *

"Mr. Paisley: In fact, we would like the whole thing identified as Government Exhibit 172.

"(The press release and attached document recorded in evidence as Government Exhibit 172.)"

This testimony was offered during cross-examination by the Government without objection from the defendant. The contrast of circumstances in the instant case is apparent.

It is further to be noted that in that case the appellate court at page 1000 of the Record stated: "The problem before us is whether these appellants were entirely immune from prosecution. *We are not now discussing the admissibility of evidence.*" (Emphasis supplied). In the instant case the admissibility of the evidence is the primary issue.

Thus, relying on the decision in the case of *May* v. *United States,* the Court of Appeals of Maryland erred in affirming the decision of the Criminal Court of Baltimore City, since the Court in the May case did not pass upon the questions involved in the instant case.

Aside, however from the distinctions showing the lack of applicability of the May case to the instant case, the Court of Appeals of the District of Columbia in a case much more recently decided, to wit, July 2, 1953, under circumstances which come much nearer to paralleling the instant case, has in a majority opinion, with Judge Prettyman dissenting, who wrote the May opinion, exploded the theory of voluntariness relied on by Judge Delaplaine in the instant case. This case was *Charles E. Nelson, Appellant* v. *United States of America, Appellee,* No. 11,353, decided July 2, 1953. Judge Bazelon, speaking for the Court, with Judge Edgerton concurring, used such significant and applicable language as the following:

> "Nelson's freedom of choice had been dissolved in a brooding omnipresence of compulsion. The Committee threatened prosecution for contempt if he refused to answer, for perjury if he lied, and for gambling activities if he told the truth * * *.
>
> "If there is anything to suggest that a congressional committee hearing is less awesome than a police station or a District Attorneys Office, and should therefore be viewed differently, it has escaped our notice.

> The similarity has become more apparent as the 'investigative' activities of Congress have become more distinguishable from the law enforcement activities of the Executive. We would have to be that 'blind' court, * * * that does not see what 'all others can see and understand' not to know that there is wide concern, both in and out of Congress, over some aspects of the exercise of the Congressional power of investigation".

The dissenting opinion of Judge Prettyman in this Nelson case does two things—(1) it shows that the question of the voluntariness of Nelson's testimony was squarely before the Court and that his was the minority view as to its interpretation; and (2) it clearly showed that his opinion in the instant case would have been that petitioners testimony should not have been admitted in evidence. We quote from a pertinent portion of his dissenting opinion:

> "As to the Statute (Sec. 3486 of Title 18) I think it was error to admit the documents against Nelson. While they did not constitute testimony, they did constitute evidence given by Nelson while he was a witness before the Committee. But I do not think this error constituted reversible error. There was more than ample other evidence to establish Nelson's guilt; evidence of employees, participants in the numbers game, etc. Some twenty witnesses who said they were otherwise engaged in the numbers operation, testified. They all testified from personal knowledge. His guilt was unquestionably established beyond a reasonable doubt by evidence not connected with these records * * *"

In the instant case, there were not records or documents offered, but actual "testimony" as prohibited by the Act. In the instant case, there was absolutely no other testimony other than that of the petitioner on which the conviction could be predicated. Mindful of the Maryland Law that the conviction could not depend upon the uncorroborated testimony of an accomplice, reliance had to be had solely on this inadmissible testimony of the petitioner himself.

There is still another aspect of this case which we feel cannot be minimized. If this Court were to adopt the position urged by the Attorney General of Maryland, there seems to us to be no escape from the fact that either the Congress of the United States would be put in the position of having lured the petitioner into testifying with a false hope based on its representations to him, or the sovereign State of Maryland would be guilty of convicting one of its citizens through trickery and deceit. The rights of the petitioner as a citizen of the United States and as a citizen of the State of Maryland entitle him to better treatment. As a matter of fact if the theory of the Attorney General of Maryland be accepted, the very purpose of the promulgating of Section 3486, Title 18, U.S.C.A. would be thwarted. That purpose is, or must be, to render possible to the Houses of Congress the enacting of useful legislation in various areas—here in the area of corrective criminal legislation. As is most often true in this field, the best possibilities lie in obtaining information from persons whose contacts have given them intimate knowledge of what is going on and in a great number of instances it means persons with criminal or previously criminal involvements. As has been evidenced, it has long been a part of Anglo-American jurisprudence that in exchange for this type of information, and as an inducement to give same, courts and legislative bodies offer immunity for this type of testimony. Is it moral that the Federal Government should induce a citizen to exchange testimony for full immunity and that a State should use the testimony so obtained not only as a basis of conviction of that citizen, but as a means of tolling the running of a Statute of Limitations against an offense confessed as having been previously committed? Would not any sane person refuse to give the information, however important or essential it might be in the field of remedial legislation, even at the pains of a penalty for contempt as against the possibility of a severe penalty—here seven (7)

years in the penitentiary—for a substantive offense? How better could the ends of justice be defeated.

The position of the Maryland Attorney General apparently adopted by the Court that the immunity of the petitioner was waived because his testimony before the Senate Committee was "Voluntary", aside from being factually unsound as hereinbefore demonstrated and legally unsound as shown by the Nelson case here quoted from, is exploded by this Court in the case of United States vs. Monia, 347 U. S. 425, which was a prosecution for the alleged violation of the Federal Anti-Trust Act.

In passing upon a demurrer of the United States to special pleas in bar to the effect that in obedience to a subpoena served the defendant appeared as a witness before the grand jury and gave testimony substantially connected with the transactions covered by the indictment wherein the United States contended that the pleas were insufficient since they failed to allege that the witness had failed to assert any claim of privilege against self-incrimination and that, therefore, neither the Fifth Amendment of the Constitution nor the immunity statute could avail him. Mr. Justice Roberts, in delivering the majority opinion of the Court said:

> "The District Court overruled the demurrers on the ground that the plain mandate of the statute precluded prosecution of the appellees whether they had claimed the privilege or not. We hold that the decision was right."

The Act that was involved was the Sherman Anti-Trust Act, which provides in part as follows:

> "... no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said Acts (the Interstate Commerce Act, the Sherman Anti-trust Act, and other acts); Provided, further, that no

person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying."

Mr. Justice Roberts further said:

"The legislation involved in the instant case is plain in its terms and, on its face, means to the layman that if he is subpoenaed, and sworn, and testifies, he is to have immunity. Instead of being a trap for the Government, as was the original Act, the statutes in question, if interpreted as the Government now desires, may be a trap for the witness. Congress evidently intended to afford Government officials the choice of subpoenaing a witness and putting him under oath, with the knowledge that he would have complete immunity from prosecution respecting any matter substantially connected with the transactions in respect of which he testified, or retaining the right to prosecute by foregoing the opportunity to examine him. That Congress did not intend, or by the statutes in issue provide, that, in addition, the witness must claim his privilege, seems clear. It is not for us to add to the legislation what Congress pretermitted."

The pertinency of the ruling in this case is emphasized when reference is had to the opinion of Judge Delaplaine of the Court of Appeals of Maryland, who said, among other things:

"In this case appellant had testified before the Senate Committee without any claim of immunity from self-incrimination. We understand that he refused to answer one question, not material here, and one of the senators made the comment that the Committee did not have the power to compel an answer to that question. But the testimony of appellant which was introduced in the Court below was given before the Committee voluntarily. The constitutional privilege against the giving of incriminating testimony must be asserted before an immunity is established. To be liable to the penalties of the statute requiring testimony before Congress, a witness must be asked a question and he must refuse to answer. As the Senate Committee did not compel appellant to testify, no immunity arose.

Consequently his testimony was admissible in evidence at his trial. The Court did not do him any injustice by admitting statements which he himself gave voluntarily under the sanctity of an oath."

CONCLUSION

We believe that there has been consistent error in every phase of the trial in the courts below. The criminal court of Baltimore City, through Trial Judge Mason, erred in allowing in evidence, over the objection of petitioner's counsel, testimony of the petitioner given before the Senate Investigating Committee and using same as the sole basis of a conviction. The Court of Appeals of Maryland, through Judge Delaplaine, erred in holding (1) that the testimony given by the petitioner before the Senate Investigating Committee was "voluntary", (2) in holding that the petitioner by failing to claim his immunity from selfincrimination before the Senate Investigating Committee made possible the use of that testimony against him in the Criminal Court of Baltimore, and (3) in failing to hold that Section 3486 of Title 18 of the U.S.C.A. rendered the petitioner immune from having testimony given by him before the Senate Investigating Committee used against him in the Criminal Court of Baltimore, in total disregard of the plain language of the statute and the reasonable interpretation of the principal established by this Court in United States vs. Monia, supra, to the effect that the immunity of a statute with comparable language is invocable, without more, when the statute provides against the use of such testimony against a defendant in any court.

The Constitutional rights of the petitioner have clearly been violated and the case should be reversed.

James A. Cobb
George E. C. Hayes
Joseph H. A. Rogan
J. Francis Ford
Counsel for Petitioner

APPENDIX

Title 28, Section 1256 (3)

> By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

Section 3486 of Title 18 of U.S.C.A. provides as follows:

> "No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committee in giving such testimony. But an official paper or record produced by him is not within the said privilege. June 25, 1948, 62 Stat. 833."

Section 192, Title 2, U.S.C.A., provides as follows:

> "Refusal of witness to testify. Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100, and imprisonment in a common jail for not less than one month nor more than twelve months."

Article 6, Clause 2 of the Constitution of the United States provides:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof,

> • • • shall be the Supreme law of the land, and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The 81st Congress, Second Session, passed Senate Resolution 202, which resolution provides as follows:

> Resolved, That a special committee composed of five members, two of whom shall be members of the minority party, to be appointed by the President of the Senate from the Committee on Interstate and Foreign Commerce of the Senate and the Committee on the Judiciary of the Senate, is authorized and directed to make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations by which such utilization is being made, what facilities are being used, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violating of law of the United States or of the laws of any State: Provided, however, That nothing contained herein shall (1) authorize the recommendation of any change in the laws of the several States relative to gambling, (2) effect any change in the laws of any State relative to gambling, or (3) effect any possible interference with the rights of the several States to prohibit, legalize, or in any way regulate gambling within their borders. For the purposes of this resolution, the term "State" includes the District of Columbia or any Territory or possession of the United States.
>
> Sec. 2. The Committee shall select a chairman from among its members. Vacancies in the membership of the committee shall not affect the power of the remaining members to execute the power of the remaining members to execute the functions of the committee,

and shall be filled in the same manner as the original selection. A majority of the members of the committee, or any subcommittee thereof, shall constitute a quorum for the transaction of business, except that a lesser number, to be fixed by the committee, shall constitute a quorum for the purpose of taking sworn testimony.

Sec. 3. The committee, or duly authorized sub-committee thereof, is authorized to sit and act at such places and times during the sessions, recesses, and adjourn periods of the Senate, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words.

Sec. 4. The committee shall have power to employ and fix the compensation of such officers, experts, and employees as it deems necessary in the performance of its duties, but the compensation so fixed shall not exceed the compensation prescribed under the Classification Act of 1949 for comparable duties. The committee is authorized to utilize the services, information, facilities, and personnel of the various departments and agencies of the Government to the extent that such services, information, facilities, and personnel, in the opinion of the heads of such departments and agencies, can be furnished without undue interference with the performance of the work and duties of such departments and agencies.

V.

12 Statute 333

U. S. Statutes at Large
36 — 37th Congress
1859 — 63.

Chapter XI. — An Act amending the Provisions of the second Section of the Act of January 24, 1857, enforcing the attendance of witnesses before Committees of either House of Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the second section of the act entitled "An Act more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony," approved January 24, 1857, be amended, altered, and repealed, so as to read as follows: That the testimony of a witness examined and testifying before either House of Congress, or any committee of either House of Congress, shall not be used as evidence in any criminal proceeding against such witness in any court of justice: Provided, however, That no official paper or record, produced by such witness on such examination, shall be held or taken to be included within the privilege of said evidence so as to protect such witness from any criminal proceeding as aforesaid; and no witness shall hereafter be allowed to refuse to testify to any fact, or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact, or the production of such paper, may tend to disgrace him or otherwise render him infamous: Provided, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.

Approved, January 24, 1862.

VI.

52 Statute 943

Joint Resolution

U. S. Statutes at Large
75th Congress, 3d Session
1938.

To Amend Sections 101, 102, 103, 104 and 859 of the Revised Statutes of the United States relating to Congressional investigations.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 101, 102, 103, 104 and 859 of the Revised Statutes of the United States are hereby amended to read as follows:

"Sec. 101. The President of the Senate, the Speaker of the House of Representatives, or a chairman of any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or of a committee of the whole, or of any committee of either House of Congress, is empowered to administer oaths to witnesses in any case under their examination.

"Sec. 102. Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 or less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

"Sec. 103. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or by any committee of either House, upon the ground that his testimony to

such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

"Sec. 104. Whenever a witness summoned as mentioned in section 102 fails to appear to testify or fails to produce any books, papers records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts as aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action."

"Sec. 859. No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege."

Any member of either House of Congress may administer oaths to witnesses in any matter depending in either House of Congress of which he is a Member, or any committee thereof.

Approved, June 22, 1938.

VIII.

11 Statute 156

U. S. Statutes at Large
34 — 35th Congress
1855 — 59

Chap. XIX.—An Act more effectually to enforce the Attendance of Witnesses on the Summons of either House of Congress and to compel them to discover testimony.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter before either House, or any committee of either House of Congress, who shall wilfully default, or who, appearing, shall refuse to answer any question pertinent to the matter of inquiry under consideration before the House or committee by which he shall be examined, shall in addition to the pains and penalties now existing, be liable to indictment as and for a misdemeanor, in any court of the United States having jurisdiction thereof, and on conviction, shall pay a fine not exceeding one thousand dollars and not less than one hundred dollars, and suffer imprisonment in the common jail not less than one month nor more than twelve months.

Sec. 2. And be it further enacted, That no person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of jurisdiction, or subject to any penalty or forfeiture for any fact or act touching which he shall be required to testify before either House of Congress or any committee of either House as to which he shall have testified whether before or after the date of this act, and that no statement made or paper produced by any witness before either House of Congress or before any committee of either House shall be competent testimony in any criminal proceeding against such witness in any court of justice; and no witness shall hereafter be allowed to refuse to testify to any fact or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact or the production of

such paper may tend to disgrace him or otherwise render him infamous; Provided, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.

Sec. 3. And be it further enacted, That when a witness shall fail to testify, as provided in the previous sections of this act, and the facts shall be reported to the House, it shall be the duty of the Speaker of the House or the President of the Senate to certify the fact under the seal of the House or Senate to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

Approved, January 24, 1857.